

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 14 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

TRACY PINKNEY,

Petitioner,

v.

D.L. STINE,

Respondent.

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Civil Action No.

08 0066

MEMORANDUM OPINION

This matter comes before the court on petitioner's *pro se* petition for a writ of habeas corpus. The petition will be denied.

Petitioner is a District of Columbia Code offender who currently is incarcerated at a United States Penitentiary in Pine Knot, Kentucky. He contends that the trial court erred in disqualifying retained defense counsel and that appellate counsel rendered ineffective assistance. Neither claim properly is before this Court.

Insofar as petitioner is pursuing a collateral attack on his conviction or sentence, he may move to vacate, set aside, or correct the sentence by filing a motion under D.C. Code § 23-110(g) in the Superior Court of the District of Columbia. *See, e.g., Butler v. United States*, 884 A.2d 1099, 1104 (D.C. 2005) (noting that prisoner "in custody under a sentence of the Superior Court may move to have the sentence vacated for various reasons, including ineffective assistance of counsel" by filing motion under § 23-110). "Section 23-110 has been found to be adequate and effective because it is coextensive with habeas corpus." *Saleh v. Braxton*, 788 F. Supp. 1232

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(D.D.C. 1992). It is settled that “a District of Columbia prisoner has no recourse to a federal judicial forum unless the local remedy is ‘inadequate or ineffective to test the legality of his detention’” *Byrd v. Henderson*, 119 F.3d 34, 36-37 (D.C. Cir. 1997) (internal footnote omitted); *Garris v. Lindsay*, 794 F.2d 722, 726 (D.C. Cir.), *cert. denied*, 479 U.S. 993 (1986). To challenge the effectiveness of appellate counsel, petitioner must move for recall of the District of Columbia Court of Appeals’ mandate affirming his conviction. *Watson v. United States*, 536 A.2d 1056, 1061 (D.C. 1987) (en banc), *cert. denied*, 486 U.S. 1010 (1988).

Accordingly, the Court will dismiss this action. An Order consistent with this Memorandum Opinion will be issued separately on this date.


United States District Judge

Date: *December 10, 2007*